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| 20999   | 7590        | 05/14/2010           | EXAMINER            |                   |
| FROMMER LAWRENCE & HAUG<br>745 FIFTH AVENUE- 10TH FL.<br>NEW YORK, NY 10151 |             |                      |                     | PIZIALI, ANDREW T |
| ART UNIT  |             | PAPER NUMBER         |                     |                   |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/730,459             | LEVINE ET AL.       |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Andrew T. Piziali      | 1786                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 May 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13,23-29 and 31-36 is/are pending in the application.  
 4a) Of the above claim(s) 3,5,9-12,24,28 and 29 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,4,6-8,13,23,25-27 and 31-36 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 6/14/04 & 3/23/06 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/5/2010</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions, filed on 4/12/2010 and 5/5/2010, have been entered.

### ***Claim Objections***

2. Claim 36 is objected to because of the following informality: The claim is missing a period. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 34 and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification is silent regarding a liquid jet pressure of at least 200 psi.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36, the limitation wherein the hydroentangling support fabric has the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus renders the claims indefinite. The “mechanical properties” and “structural strength” required to reflect liquid jetted from a hydroentangling apparatus depend on a plurality of variables. For example, the amount of structural strength required to reflect liquid jets depends on the liquid jet pressure and the exposure time to the liquid jets. At a lower pressure and/or shorter exposure time little structural strength is required to handle the liquids jets but at a higher pressure and/or a longer exposure time a larger structural strength is required to handle the liquid jets. Therefore, it is unclear what mechanical properties or structural strength is claimed.

Regarding claims 33 ad 35, there is insufficient antecedent basis for the limitation “the thickness T” in the claims.

Regarding claims 33 and 35, the Markush members render the claims indefinite because each member refers to a property wherein flat filaments are not present without establishing that which is present. It is not clear if all or some or none of the other variables are the same. For example, materials, structure, element size, and/or density. In addition, the claims fail to positively identify the non-flat shape(s).

***Claim Rejections - 35 USC § 102/103***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document).

Noelle discloses a hydroentangling apparatus, for the production of a hydroentangled nonwoven product, comprising a water permeable support fabric comprising flat filaments wherein said support fabric is endless (see entire document including Figure 2, [0092] and [0093]).

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2 and 4, flat filaments may be used in one direction while round filaments may be used in the perpendicular direction ([0092]).

Regarding claim 6, flat filaments may be used in both directions ([0038] and [0092]).

Regarding claim 13, the support fabric inherently possesses the claimed permeability [0037].

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either

anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

10. Claims 23, 25-27, 31, 32, 35 and 36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser.

Gaisser discloses a water permeable support fabric comprising rectangular (flat) filaments wherein said support fabric is endless (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50).

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on *prima facie* obviousness under 35 U.S.C. § 103, jointly

or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 25-27, 31 and 32, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claim 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3).

Regarding claims 35 and 36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

11. Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 6,074,966 to Zlatkus.

Zlatkus discloses a hydroentangling apparatus, for the production of a hydroentangled nonwoven product, comprising a water permeable support fabric comprising flat filaments wherein said support fabric is endless (see entire document including column 2, lines 32-52, column 3, lines 21-29, and the Examples).

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on *prima facie* obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, all of the MD and CD filaments are flat filaments.

Regarding claim 13, the support fabric inherently possesses the claimed permeability.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

***Claim Rejections - 35 USC § 103***

12. Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document) as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

Noelle does not appear to mention the flat filaments support fabric being a multilayer weave, but Gaisser discloses that it is known in the papermaking apparatus art to use a flat filament support fabric with a multilayer weave to improve stability in the machine direction while maintaining the desired permeability (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flat filament support fabric of Noelle with a multilayer weave, as taught by Gaisser, motivated by a desire to increase structural stability in the machine direction while still affording a high degree of permeability and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

13. Claims 1, 2, 4, 6-8, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser in view of WO 01/88261 to Strandqvist.

Gaisser discloses a support fabric comprising rectangular (flat) filaments wherein said support fabric is endless (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50).

Regarding claims 1, 2, 4, 6-8 and 13, Gaisser discloses using the support fabric in a papermaking apparatus (column 1, lines 11-25), but Gaisser does not mention using the support fabric in a hydroentangling apparatus. Strandqvist discloses that it is known in the hydroentangling apparatus art to use a support fabric from a papermaking apparatus (see entire document including page 4, lines 7-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the support fabric of Gaisser in a hydroentangling apparatus, motivated by a desire to construct a functioning hydroentangling apparatus.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

Regarding claim 13, Gaisser discloses that the permeability of the support fabric is greater than 350 cfm (column 4, lines 50-60).

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

14. Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,074,966 to Zlatkus as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

Zlatkus does not appear to mention the flat filaments support fabric being a multilayer weave, but Gaisser discloses that it is known in the papermaking apparatus art to use a flat filament support fabric with a multilayer weave to improve stability in the machine direction while maintaining the desired permeability (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flat filament support fabric of Zlatkus with a multilayer weave, as taught by Gaisser, motivated by a desire to increase structural stability in the machine direction while still affording a high degree of permeability and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

15. Claims 1, 2, 4, 6, 13, 23, 25-27 and 31-36 are rejected under 35 U.S.C. 103(a) as obvious over WO 01/88261 to Strandqvist in view of USPN 3,790,438 to Lewis.

Strandqvist discloses a hydroentangling apparatus comprising an endless water permeable hydroentangling support member, for the production of a hydroentangled nonwoven product, wherein the support member comprises a polymeric screen with reinforcement filaments (14) (see entire document including the Figures, page 1, lines 4-5, page 3, lines 13-25, and page 5, lines 4-11).

Strandqvist illustrates round reinforcement filaments (14) but does not appear to mention the use of flat reinforcement filaments. Lewis discloses that it is known in the art to reinforce polymeric compositions with flat reinforcement filaments (see Background of the invention section column 1, lines 5-55). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the round reinforcement filament shape of Standqvist with the flat shape taught by Lewis, motivated by a desire to provide substantial biaxial reinforcement to the polymeric screen and/or because it is within the general skill of a worker in the art to select a known shape on the basis of its suitability and desired characteristics.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, all of the MD and CD filaments are flat filaments.

Regarding claim 13, the support fabric inherently possesses the claimed permeability.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are

commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claim 32, the support fabric includes a plurality of layers (Figure 3).

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

16. Claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of any one of WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document), USPN 6,074,966 to Zlatkus, or USPN 5,915,422 to Fagerholm.

Greenway discloses an endless hydroentangling support fabric (belt) in a hydroentangling apparatus for the production of a hydroentangled nonwoven product (see entire document including column 4, lines 33-46 and Figure 1). Greenway discloses the use of a support fabric with round filaments (Table I), but Greenway is silent with regards to the use of flat filaments.

Noelle discloses that it is known in the hydroentangling support fabric art to use flat filaments to obtain the desired nonwoven appearance (see entire document including [0038], [0092] and [0093]). Zlatkus discloses that it is known in the hydroentangling support fabric art to use flat filaments to assist in producing different textures or patterns as desirable for the intended application (see entire document including column 2, lines 32-52, column 3, lines 21-29, and the Examples). Fagerholm discloses that it is known in the belt art (column 1, lines 5-16) to use a support fabric comprising flat filaments to decrease support fabric thickness and/or increase wear potential (see Background Art section column 1, line 19 through column 2, line

58). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the round filaments of Greenway with the flat filaments taught by the prior art, motivated by a desire to control texture or pattern, decrease thickness, and/or increase wear potential and because it is within the general skill of a worker in the art to select a known filament shape on the basis of its suitability and desired characteristics.

The substitution of known equivalent structures involves only ordinary skill in the art. *In re Fout* 213 USPQ 532 (CCPA 1982); *In re Susi* 169 USPQ 423 (CCPA 1971); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *In re Ruff* 118 USPQ 343 (CCPA 1958). When a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result. *KSR v. Teleflex*.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on *prima facie* obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to

obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 2, 4 and 6, Greenway discloses that the filaments are present in the MD and CD direction (Table 1). Greenway discloses that round filaments are known in the art while Noelle, Zlatkus, and Fagerholm each disclose that flat filaments are known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the round and/or flat filaments in the MD and/or CD direction based on the desired support fabric thickness and/or wear potential.

Regarding claim 13, Greenway discloses that the void areas are 35% or more (column 6, lines 25-43). Therefore, Greenway inherently teaches that the permeability of the support fabric is greater than 350 cfm.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-

obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 33-36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

17. Claims 2, 4, 6-8, 13 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of any one of WO 01/25522 to Noelle (USPAP 2002/0160681 cited as translation document), USPN 6,074,966 to Zlatkus, or USPN 5,915,422 to Fagerholm as applied to claims 1, 2, 4, 6, 13, 23, 25-27, 31 and 33-36 above, and further in view of USPN 5,857,497 to Gaisser.

Greenway does not appear to mention the flat filaments support fabric being a multilayer weave, but Gaisser discloses that it is known in the papermaking apparatus art to use a flat filament support fabric with a multilayer weave to improve stability in the machine direction while maintaining the desired permeability (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flat filament support fabric of Greenway with a multilayer weave, as taught by Gaisser, motivated by a desire to increase structural stability in the machine direction while still affording a high degree of permeability and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 2, 4 and 6, Gaisser discloses that the fabric includes MD filaments and CD filaments (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the MD and/or CD yarns (column 6, lines 41-50).

Regarding claims 7, 8 and 32, Gaisser discloses that the support fabric is a multilayer weave fabric (paragraph bridging columns 2 and 3) and that a rectangular shape may be utilized in the first and/or second layer (column 6, lines 41-50).

18. Claims 23, 25-27, 31, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight.

Elsener discloses a fabric comprising flat filaments (see entire document including column 3, lines 40-47). Elsener discloses that the fabric is preferably a roller hand towel (column 3, lines 56-62). Elsener does not appear to specifically disclose that the roller hand towel is in a continuous loop or made endless, but Schwartz and Whight each disclose that it is known in the roller hand towel art to use an endless fabric (see entire documents including column 1, lines 4-23 and column 2, lines 43-45 of Schwartz and column 1, lines 4-45 of Whight). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric in any suitable shape, such as an endless fabric, because it is within the general skill of a worker in the art to select a known shape on the basis of its suitability and desired characteristics.

Regarding the fabric having the mechanical properties and structural strength to reflect liquid jetted from the hydroentangling apparatus, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on *prima facie* obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant

intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claims 35 and 36, the prior art fabric inherently possesses the claimed characteristics because the fabric structure is substantially identical to the claimed fabric.

***Response to Arguments***

19. Applicant's arguments filed 5/5/2010 have been considered but are mostly moot in view of the new grounds of rejection.

Regarding the Elsener rejections, the applicant asserts that the support fabric taught by the applied prior art could not withstand pressures of between 200 and 2000 psi. Applicant's argument is not persuasive. Firstly, with the exception of claims 34 and 36, the feature upon which applicant relies is not recited in the rejected claims. Secondly, the limitations of claims 34 and 36 are new matter. Thirdly, a liquid jet exposure time is not specified in any claim and therefore all of the claims are indefinite as explained above. Fourthly, the applicant fails to provide evidence that the fabric cannot withstand the claimed pressure.

***Conclusion***

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/  
Primary Examiner, Art Unit 1786